

## HOUSE BILL NO. 575

INTRODUCED BY MCCHESENEY, ANKNEY, AUGARE, MACLAREN, MCNUTT, SESSO, BALES, KEANE,  
LEWIS, J. PETERSON, STAHL

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT ~~PRODUCTION WATER FROM AN OIL OR GAS~~  
~~WELL WATER PRODUCED IN ASSOCIATION WITH COAL BED METHANE PRODUCTION~~ MAY BE USED FOR  
CERTAIN PURPOSES; ALLOWING A TEMPORARY PERMIT FOR THE BENEFICIAL USE OF ~~PRODUCTION~~  
~~WATER FROM AN OIL OR GAS WELL~~; COAL BED METHANE PRODUCTION; INCREASING COMPENSATION  
FROM THE COAL BED METHANE PROTECTION PROGRAM; ASSESSING A FEE; REQUIRING A STUDY OF  
ISSUES RELATED TO WATER IN ASSOCIATION WITH OIL AND GAS PRODUCTION; AMENDING SECTIONS  
15-36-331, 82-11-101, 76-15-904, 76-15-905, AND 82-11-175, 85-2-102, 85-2-505, AND 85-2-510; MCA;  
REPEALING SECTION 10, CHAPTER 531, LAWS OF 2001; AND PROVIDING AN IMMEDIATE EFFECTIVE  
DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

**NEW SECTION. Section 1. Temporary permit.** (1) As provided in this section and in accordance with  
this part, the department shall issue a temporary permit for the beneficial use of water produced in association  
with coal bed methane production.

(2) In addition to the requirements of this part, an application for a temporary permit under this section  
must:

(a) provide that the source of the appropriation is surface water in the pipeline, pond, pit, or other means  
of containing or conveying the water approved by the board of oil and gas conservation pursuant to 85-2-510;

(b) provide that the point of diversion is a specified place diverting the water from the pipeline, pond, pit,  
or other means of containing or conveying the water approved by the board of oil and gas conservation pursuant  
to 85-2-510; and

(c) limit the use of the water to:

(i) stock water;

1 (ii) managed irrigation with no return flow to surface water;

2 (iii) dust suppression and other industrial uses;

3 (iv) domestic use; or

4 (v) distribution for the purposes of subsections (2)(c)(i) through (2)(c)(iv).

5 (3) A temporary permit issued under this section expires when the beneficial use ceases or coal bed  
6 methane production ceases.

7 (4) An applicant for a temporary permit under this section shall pay an \$800 fee to the department.

8 (5) (a) The holder of the temporary permit shall notify the department when the beneficial use ceases  
9 or coal bed methane production ceases.

10 (b) The owner of the coal bed methane well or the holder of the temporary permit shall give the owner  
11 of the land where the well is located reasonable notice that the temporary permit is about to expire.

12 (6) Water right holders who may be affected by the use of water under a temporary permit issued  
13 pursuant to this part are eligible for compensation pursuant to 76-15-905.

14 (7) Permits may not be issued under this section after June 30, 2011.

15 (8) Appropriations approved under this section must not exceed a combined total volume of 2,000  
16 acre-feet annually.

17 (9) (a) The department and the board of oil and gas conservation shall study the:

18 (i) effect on ground water of water produced in association with oil and gas production by using  
19 information gathered prior to [the effective date of this act] and any information collected pursuant to this section;  
20 and

21 (ii) appropriate uses of water produced in association with oil and gas production.

22 (b) The department and the board of oil and gas conservation shall report findings and any  
23 recommended legislation from the study to the appropriate interim committee in accordance with 5-11-210 before  
24 September 1, 2010.

25 (10) Nothing in this section alters or amends in any way a water compact that has been entered into and  
26 approved by the state of Montana and a tribe, the United States, or another state under Title 85, chapter 20.

27  
28 **Section 2.** Section 15-36-331, MCA, is amended to read:

29 **"15-36-331. Distribution of taxes.** (1) (a) For each calendar quarter, the department shall determine  
30 the amount of tax, late payment interest, and penalties collected under this part.

(b) For the purposes of distribution of oil and natural gas production taxes to county and school district taxing units under 15-36-332 and to the state, the department shall determine the amount of oil and natural gas production taxes paid on production in the taxing unit.

(2) (a) The amount of oil and natural gas production taxes collected for the privilege and license tax pursuant to 82-11-131 must be deposited, in accordance with the provisions of 17-2-124, in the state special revenue fund for the purpose of paying expenses of the board, as provided in 82-11-135.

(b) The amount of the tax for the oil, gas, and coal natural resource account established in 90-6-1001 must be deposited in the account.

(3) (a) For each tax year, the amount of oil and natural gas production taxes determined under subsection (1)(b) is allocated to each county according to the following schedule:

Big Horn	45.05%
Blaine	58.39%
Carbon	48.27%
Chouteau	58.14%
Custer	69.53%
Daniels	50.81%
Dawson	47.79%
Fallon	41.78%
Fergus	69.18%
Garfield	45.96%
Glacier	58.83%
Golden Valley	58.37%
Hill	64.51%
Liberty	57.94%
McCone	49.92%
Musselshell	48.64%
Petroleum	48.04%
Phillips	54.02%
Pondera	54.26%
Powder River	60.9%

1	Prairie	40.38%
2	Richland	47.47%
3	Roosevelt	45.71%
4	Rosebud	39.33%
5	Sheridan	47.99%
6	Stillwater	53.51%
7	Sweet Grass	61.24%
8	Teton	46.1%
9	Toole	57.61%
10	Valley	51.43%
11	Wibaux	49.16%
12	Yellowstone	46.74%
13	All other counties	50.15%

14           (b) The oil and natural gas production taxes allocated to each county must be deposited in the state  
 15 special revenue fund and transferred to each county for distribution, as provided in 15-36-332.

16           (4) The department shall, in accordance with the provisions of 17-2-124, distribute the state portion of  
 17 oil and natural gas production taxes remaining after the distributions pursuant to subsections (2) and (3) as  
 18 follows:

19           (a) for each fiscal year through the fiscal year ending June 30, 2011, to be distributed as follows:

20           (i) 1.23% to the coal bed methane protection account established in 76-15-904;

21           (ii) 1.45% to the natural resources projects state special revenue account established in 15-38-302;

22           (iii) 1.45% to the natural resources operations state special revenue account established in 15-38-301;

23           (iv) 2.99% to the orphan share account established in 75-10-743;

24           (v) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the  
 25 purposes of the state tax levy as provided in 20-25-423; and

26           (vi) all remaining proceeds to the state general fund;

27           (b) for fiscal years beginning after June 30, 2011, to be distributed as follows:

28           (i) 2.16% to the natural resources projects state special revenue account established in 15-38-302;

29           (ii) 2.02% to the natural resources operations state special revenue account established in 15-38-301;

30           (iii) 2.95% to the orphan share account established in 75-10-743;

(iv) 2.65% to the state special revenue fund to be appropriated to the Montana university system for the purposes of the state tax levy as provided in 20-25-423; and

(v) 1.23% to the coal bed methane protection account established in 76-15-904; and

~~(v)~~(vi) all remaining proceeds to the state general fund."

**Section 3.** Section 76-15-904, MCA, is amended to read:

**"76-15-904. Coal bed methane protection account -- use.** (1) There is a coal bed methane protection account in the state special revenue fund.

(2) There must be deposited in the account the proceeds from the distribution of oil and natural gas production taxes, as provided in 15-36-331.

(3) All money paid into the account must be invested by the board of investments. Earnings from investments must be deposited in the account.

(4) ~~Subject to the conditions of subsection (5), money~~ Money deposited in the account must be used to compensate landowners and water right holders for damages attributable to coal bed methane development as provided in this part.

~~(5) Money deposited in the fund and earnings of the fund may not be expended until after June 30, 2005. For fiscal years beginning after June 30, 2005, principal and earnings may be expended only in the case of an emergency. For fiscal years beginning after June 30, 2011, principal and earnings in the account may be expended for any purpose authorized pursuant to this part.~~

~~(6)(5)~~ Money in the account must be appropriated to the department for use by conservation districts that have private landowners or water right holders who qualify for compensation as provided in 76-15-905. ~~(Subsection (2) terminates June 30, 2011--sec. 10, Ch. 531, L. 2001.)"~~

**Section 4.** Section 76-15-905, MCA, is amended to read:

**"76-15-905. Coal bed methane protection program -- restrictions.** (1) There is a coal bed methane protection program administered by conservation districts that have coal beds within the exterior boundary of the district or whose water sources may be adversely affected by the extraction of coal bed methane. The purpose of the coal bed methane protection program is to compensate private landowners or water right holders for damage caused by coal bed methane development.

(2) A conservation district shall establish procedures, approved by the department, for evaluating claims

for compensation submitted by a landowner or water right holder. The procedures must include:

(a) a method for submitting an application for compensation for damages caused by coal bed methane development;

(b) a process for determining the cost of the damage to land, surface water, or ground water, if any, caused by coal bed methane development;

(c) the development of eligibility requirements for receiving compensation that include an applicant's access to existing sources of state funding, including state-mandated payments, that compensate for damages; and

(d) criteria for ranking applications related to available resources.

(3) An eligible recipient for compensation includes private landowners and water right holders who can demonstrate as the result of damage caused by coal bed methane development:

(a) a loss of agricultural production or a loss in the value of land;

(b) a reduction in the quantity or quality of water available from a surface water or ground water source that affects the beneficial use of water; or

(c) the contamination of surface water or ground water that prevents its beneficial use.

(4) (a) Subject to the conditions of subsections (5) through ~~(6)~~ (7), an eligible landowner may be compensated for the damages incurred by the landowner for loss of agricultural production and income, lost land value, and lost value of improvements caused by coal bed methane development. A payment made under this subsection (4)(a) may only cover land directly affected by coal bed methane development.

(b) Subject to the conditions of subsections (5) through ~~(6)~~ (7), an eligible water right holder may be compensated for damages caused by the contamination, diminution, or interruption of surface water or ground water.

(5) In order to qualify for a payment of damages under this section, the landowner or water right holder shall demonstrate that it is unlikely that compensation will be made by the coal bed methane developer or operator who is liable for the damage to land or the reduction in or contamination of surface water or ground water as the result of coal bed methane development.

(6) Compensation made to a landowner or a water right holder under this section may not exceed 75% of the cost of the damages. The maximum amount paid to a landowner or water right holder may not exceed ~~\$50,000~~ \$150,000.

(7) Conservation district administrative expenses for services provided under this section are eligible

costs for reimbursement from the coal bed methane protection account.

~~———— (8) (a) Except as provided in subsection (8)(b), compensation for damages allowed under this section may be made only after June 30, 2011.~~

~~———— (b) Compensation for an emergency may be made after June 30, 2005."~~

**Section 5.** Section 82-11-175, MCA, is amended to read:

**"82-11-175. Coal bed methane wells -- requirements.** (1) Coal bed methane production wells that involve the production of ~~ground~~ water must comply with this section.

(2) ~~Ground-water~~ Water produced in association with a coal bed methane ~~well~~ production must be managed in any of the following ways:

(a) used as irrigation or stock water or for other beneficial uses in compliance with Title 85, chapter 2, part 3;

(b) reinjected to an acceptable subsurface strata or aquifer pursuant to applicable law;

(c) discharged to the surface or surface waters subject to the permit requirements of Title 75, chapter 5; or

(d) managed through other methods allowed by law.

(3) (a) Prior to the development of a coal bed methane well that involves the production of ~~ground~~ water from an aquifer that is a source of supply for appropriation rights or permits to appropriate under Title 85, chapter 2, the developer of the coal bed methane well shall notify and offer a reasonable mitigation agreement to each appropriator of water who holds an appropriation right or a permit to appropriate under Title 85, chapter 2, that is for ground water and for which the point of diversion is within:

(i) 1 mile of the coal bed methane well; or

(ii) one-half mile of a well that is adversely affected by the coal bed methane well.

(b) The mitigation agreement must address the reduction or loss of water resources and must provide for prompt supplementation or replacement of water from any natural spring or water well adversely affected by the coal bed methane well. The mitigation agreement is not required to address a loss of water well productivity that does not result from a reduction in the amount of available water because of production of ground water from the coal bed methane well."

NEW SECTION. **Section 6. Repealer.** Section 10, Chapter 531, Laws of 2001, is repealed.

**NEW SECTION.** **Section 7. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 85, chapter 2, part 3, and the provisions of Title 85, chapter 2, part 3, apply to [section 1].

**NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

**NEW SECTION.** **Section 9. Effective date.** [This act] is effective on passage and approval.

**NEW SECTION. Section 10. Applicability.** [This act] applies to pending beneficial use applications for water produced in association with coal bed methane production submitted before [the effective date of this act] and to beneficial use applications for water produced in association with coal bed methane production submitted on or after [the effective date of this act].

- END -